FILE COPY

Office - Supreme Court, U.S.
FILED
APR 1? 19??
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 857

JOHN L. LEWIS, HENRY G. SCHMIDT AND JOSEPHINE ROCHE, AS TRUSTEES OF THE UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND OF 1950, *Petitioners*

v.

JOHN A. PAVLOVSCAK, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

JOHN J. WILSON
815 Fifteenth Street, N. W.
Washington 5, D. C.

A. E. KOUNTZ
575 Union Trust Building
Pittsburgh 19, Pennsylvania

VAL J. MITCH
907 Fifteenth Street, N. W.
Washington 5, D. C.

Attorneys for Petitioners

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX

	Page
Citations to Opinions Below	2
Jurisdiction	2
Question Presented	2
Statute Involved	3
Statement of the Case	3
Reasons for Granting the Writ	5
The Orderly Implementation of the National Labor Policy Expressed by the Labor-Management Relations Act, 1947, Requires That Suits Pertaining to the Administration of an Employees' Welfare Trust Fund (Including Payment of Benefits Thereunder), Established Pursuant to Section 302 (c)(5) of That Act, as Amended, 29 U.S.C. 186 (c)(5), be Brought in the Federal Court in the District in Which Such Fund Has Its Principal Office	5
Conclusion	16
Appendix	1a
Pavlovscak v. Lewis (1960) (D.C. W.D. Pa.), 168 F. Supp. 839	1a
Lewis v. Pavlovscak (1960) (C.A. 3), 274 F. 2d 523	9a

CITATIONS

CASES:

Amalgamated Assoc. v. Wisc. Emp. Rel. Bd. (1951), 340 U.S. 383, 95 L. Ed. 364	6
Arroyo v. United States (1959), 359 U.S. 419, 424-425, 3 L. Ed. 2d 915, 919	7
Barrett v. Miller (D.C., S.D., N.Y., 1958), 166 F. Supp. 929	9
Brooks v. N.L.R.B. (1954), 348 U.S. 96, 99, 99 L. Ed. 125, 134	5
Fikes v. Fund (1958) (Cir. Ct. 10th Judicial Circuit of Ala.), Civil Action No. 36362-X	15

Page

Herr v. Lewis (1954) (D.C. S.D., Ind.), Civil Action No. 576 15
Hickey v. Lewis (1950) (Harlan Cir. Ct., Ky.) 15
Hobbs v. Lewis (Supreme Court of Tennessee, 1954), 197 Tenn. 44, 270 S.W. 2d 352 ..... 9, 15
Kane v. Lewis (1954) (Sup. Ct. N.Y.), 125 N.Y.S. 2d 544 15
Lewis v. Benedict Coal Corp. (Oct. Term, 1959, No. 18), U.S. , 4 L. Ed. 2d 442 9
Local 24, I.B. of T.C.W. & H. v. Oliver (1959), 358 U.S. 283, 296-297, 3 L. Ed. 2d 312, 321-322 8
Luchetti v. Lewis (1954) (D.C., D. Utah), Civil Action No. C 184-53 15
Moses v. Ammond (D.C., S.D., N.Y., 1958), 162 F. Supp. 866 9
Mykalyk v. Lewis (No. 149, March Term, 1959), 398 Pa. 390; A. 2d 9
N.L.R.B. v. Fainblatt (1938), 306 U.S. 601, 83 L. Ed. 1014 5
N.L.R.B. v. Jones & Laughlin Steel Co. (1936), 301 U.S. 1, 22-23, 83 L. Ed. 893 5
Polish Nat. Alliance v. N.L.R.B. (1944), 322 U.S. 643, 88 L. Ed. 1509 6
Textile Workers Union v. Lincoln Mills (1957), 353 U.S. 448, 457, 1 L. Ed. 2d 972, 980-981 ..... 8, 14
Weber v. Anheuser-Busch (1954), 348 U.S. 468, 480, 99 L. Ed. 546, 557 6

STATUTES:

Labor-Management Relations Act, 1947, Sec. 302, Title III, c. 120, 61 Stat. 157, 29 U.S.C.A. 186 ..... 2, 3, 4, 5, 6, 7, 10, 12, 15

MISCELLANEOUS:

Living Trust of Movables in the Conflict of Laws, 45 Harvard Law Review, 969 15
Restatement of the Conflict of Laws, Section 299 15
S. Rep. No. 1734, 84th Cong., 2d Sess. 11

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No.

JOHN L. LEWIS, HENRY G. SCHMIDT AND JOSEPHINE ROCHE, AS TRUSTEES OF THE UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND OF 1950, *Petitioners*

v.

JOHN A. PAVLOVSCAK, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

John L. Lewis, Henry G. Schmidt and Josephine Roche, as Trustees of the United Mine Workers of America Welfare and Retirement Fund of 1950, (hereinafter sometimes referred to as the "Trustees" and the "Trust Fund", respectively), Petitioners, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit at No. 12,835, entered September 18, 1959, and, on a Petition for Rehearing, the order denying the same entered February 10, 1960.

CITATIONS TO OPINIONS BELOW

The opinion of the District Court for the Western District of Pennsylvania is reported at 168 F. Supp. 839 and is printed in the Appendix to this Petition, page 1a. The opinion of the United States Court of Appeals for the Third Circuit is reported at 274 F. 2d 523 and is printed at page 9a of the Appendix to this Petition. The opinion of the United States Court of Appeals for the Third Circuit denying the Petition for Rehearing is reported at 274 F. 2d 527 and is printed at page 15a of the Appendix to this Petition.

JURISDICTION

The judgment of the United States Court of Appeals for the Third Circuit, affirming the interlocutory order of the District Court, was entered September 18, 1959. Rehearing was denied February 10, 1960. (Appendix, pages 9a and 15a). The jurisdiction of this Court is invoked under the provisions of 28 U.S.C. Section 1254(1).

QUESTION PRESENTED[1]

This case poses an important and recurrent question concerning the interpretation of the Labor-Management Relations Act, 1947, not heretofore passed upon by this Court, namely:

Does not implementation of the national labor policy expressed by the Labor-Management Relations Act, 1947, require that suits pertaining to the administration of an employees' welfare trust fund (including those to compel payments of benefits thereunder) set up pursuant to Section 302 (c) of that Act, as amended.

[1] The same question is presented in *Lewis v. Myhalyk*, in which a companion Petition for Certiorari to the Supreme Court of Pennsylvania is filed concurrently herewith.

29 U.S.C. 186 (c), be brought in the federal court in the district in which such fund has its principal office?

STATUTE INVOLVED

The statutory provision involved is Section 302 of the Labor-Management Relations Act, 1947, Title 3, Chapter 120, 61 Stat. 157, 29 U.S.C., Section 186 (printed in Appendix, page 17a).

STATEMENT OF THE CASE

On August 8, 1957, Respondent (plaintiff below) filed this suit in the United States District Court for the Western District of Pennsylvania seeking to compel Petitioners (defendants below) to declare him eligible to receive a pension from the Trust Fund. Jurisdiction was founded upon diversity of citizenship, and service was purportedly made in accordance with Pennsylvania law. Petitioners then filed a motion to dismiss for lack of jurisdiction, which was denied by order of the District Court dated December 15, 1958. On December 21, 1958, that order was amended to allow Petitioners to apply to the United States Court of Appeals for the Third Circuit for an interlocutory appeal under Section 1292 (b) of Title 28 U.S.C. The Third Circuit granted this appeal, and on September 18, 1959, affirmed the ruling of the District Court. On February 10, 1960, the Third Circuit denied Petitioners' motion for Rehearing.

This petition for certiorari and the companion petition for certiorari in *Lewis* v. *Myhalyk*, filed concurrently herewith, raise a basic question concerning judicial review over the administration of employee welfare trust funds created pursuant to Section 302 (c)(5) of the Labor-Management Relations Act, 1947,

29 U.S.C. 186 (c)(5) (hereinafter referred to as the "Act"), namely, whether jurisdiction over the administration of such welfare trust funds is vested in the federal district court at the principal office of such trust funds, or whether judicial review is to be opened up to any state or federal court where service can be obtained under local law.

The Trust Fund here involved was established pursuant to the provisions of Section 302 (c)(5) of the Act, 29 U.S.C., 186 (c)(5). It came into being as an inherent part of an industry-wide collective bargaining agreement, known as the National Bituminous Coal Wage Agreement of 1950, between the United Mine Workers of America and the thousands of bituminous coal operators located throughout more than 26 states. Petitioners, in accordance with that Agreement and the aforesaid Act, consist of a trustee appointed by the operators, one appointed by the Union, and one trustee selected by the operators and the Union. The parties to the Agreement specifically vested broad authority and discretion in the trustees to manage the Trust Fund and promulgate appropriate regulations relating to, inter alia, the payment of pension benefits. That Agreement, in compliance with Section 302 (c)(5) of the Act, further provides that the detailed basis, upon which such payments are to be made from the Trust Fund, should be set down in writing.

In accordance with the Agreement, each operator is assessed a certain royalty for each ton of coal produced for use or for sale, which is then paid directly to the Petitioners and is deposited in a general account. Subsequently, certain of these funds are transferred to a separate trust known as the Pension Trust, as is required by the Act and Agreement.

The Trust Fund, including that portion of it relating to pension benefits, is administered solely in the District of Columbia, where its principal office has been located since its inception, as required by the Agreement. All payments to the Trust Fund are made to Petitioners in the District of Columbia, all trust investments are solely in movables administered in the District of Columbia, and all meetings of the Petitioners (except two emergency meetings) have been held in the District of Columbia.

REASONS FOR GRANTING THIS WRIT[2]

The Orderly Implementation of the National Labor Policy Expressed by the Labor-Management Relations Act, 1947, Requires That Suits Pertaining to the Administration of an Employees' Welfare Trust Fund, (Including Payment of Benefits Thereunder), Established Pursuant to Section 302 (c)(5) of That Act, as Amended, 29 U.S.C., 186 (c)(5), be Brought in the Federal Court in the District in Which Such Fund Has Its Principal Office.

The National Labor Relations Act, known as the Wagner Act, recognized the necessity for a unified national labor policy to prevent industrial strife. *N.L.R.B.* v. *Fainblatt* (1938), 306 U.S. 601, 83 L. Ed. 1014; *N.L.R.B.* v. *Jones & Laughlin Steel Co.* (1936), 301 U.S. 1, 22-23, 83 L. Ed. 893. This unified national labor policy was further implemented by the Labor-Management Relations Act, 1947. *Brooks* v. *N.L.R.B.* (1954), 348 U.S. 96, 99, 99 L. Ed. 125, 134. By these acts, Congress, in order to protect interstate commerce from the adverse effects of labor-management disputes, undertook to regulate labor relations to the full extent of its constitutional power under the

[2] This section of this Petition is virtually the same as the corresponding section of the Petition in the companion case of *Lewis* v. *Muhalyk*, contemporaneously filed herewith.

interstate commerce clause. *Amalgamated Assoc.* v. *Wisc. Emp. Rel. Bd.* (1951), 340 U.S. 383, 95 L. Ed. 364; *Polish Nat. Alliance* v. *N.L.R.B.* (1944), 322 U.S. 643, 88 L. Ed. 1509; *Weber* v. *Anheuser-Busch* (1954), 348 U.S. 468, 480; 99 L. Ed. 546, 557, where this Court said:

> "By the Taft-Hartley Act, Congress did not exhaust the full sweep of legislative power over industrial relations given by the Commerce Clause. Congress formulated a code whereby it outlawed some aspects of labor activities and left others free for the operation of economic forces. As to both categories, the areas that have been pre-empted by federal authority and thereby withdrawn from state power are not susceptible of delimitation by fixed metes and bounds. Obvious conflict, actual or potential, leads to easy judicial exclusion of state action. * * *"

The Trust Fund was created pursuant to Section 302 (c)(5) of the Act, in which Congress set forth the requirements governing the creation and operation of welfare trust funds, epitomized as follows:

(1) that the payments to the fund are to be held in trust for certain specified purposes;

(2) that the detailed basis on which said payments are to be made be particularized in writing;

(3) that the employers and employees have equal representation in the administration of said fund, together with such neutral persons as they might choose;

(4) that in the event of a deadlock in the administration of such fund, the federal court at the situs (principal office) of said fund shall appoint an impartial umpire;

(5) that there be provision for an annual audit of the fund, the results of which are to be available

for inspection at the situs (principal office) of the fund; and

(6) that payments intended to be used for pensions or annuities be placed in a separate trust and used for no other purposes.

Additionally, Congress specifically vested equitable jurisdiction in the federal district courts to restrain violations of Section 302. (Section 302 (e) of the Act). In *Arroyo* v. *United States* (1959), 359 U.S. 419, 424-425, 3 L. Ed. 2d 915, 919, this Court noted in relation to this section that:

> "When Congress enacted § 302 its purpose was not to assist the States in punishing criminal conduct traditionally within their jurisdiction, but to deal with problems peculiar to collective bargaining. *The provision was enacted as part of a comprehensive revision of federal labor policy in the light of experience acquired during the years following passage of the Wagner Act, and was aimed at practices which Congress considered inimical to the integrity of the collective bargaining process.*" (Emphasis supplied).

Since this Trust Fund exists as a direct product of the national labor policy, it follows that a body of federal law should be applied to it by the appropriate federal court.

Indeed, in light of the express language of Congress in Sections 302 (c)(5) and 302 (e), it is clear that Congress intended to establish a body of federal substantive law to govern the administration of welfare trust funds and vested judicial supervision of such trust funds exclusively in the appropriate federal court. Admittedly, Congress did not spell out in minute detail how every trust fund is to be administered; but

that apparent legislative forbearance should not permit the federal courts to abdicate their duty of judicial review to state courts, nor permit a federal court to apply state law. To the contrary, as this Court noted in *Textile Workers Union* v. *Lincoln Mills* (1957), 353 U.S. 448, 457, 1 L. Ed. 2d 972, 980-981:

> "The Labor Management Relations Act expressly furnishes some substantive law. It points out what the parties may or may not do in certain situations. Other problems will lie in the penumbra of express statutory mandates. *Some will lack express statutory sanction but will be solved by looking at the policy of the legislation and fashioning a remedy that will effectuate that policy . . . Federal interpretation of the federal law will govern, not state law.*" (Emphasis supplied).

This approach is the only one consistent with the uniform effectuation of the over-all national labor policy. This Court, in recognition of the national labor policy, and, perforce, the necessity for the application of a uniform federal substantive law with regard thereto, has held that the federal courts under Section 301 of the Act must fashion a body of federal law for the enforcement of collective bargaining agreements affecting interstate commerce. *Textile Workers Union* v. *Lincoln Mills, supra.* The "paramount force of the federal law", as in all cases of pre-emption, is such that it prevails over inconsistent state law, whether expressed by an enactment of Congress itself or by the details of a collective bargaining agreement, which federal law empowers the parties to make. See *Local 24, I.B. of T.C.W. & H.* v. *Oliver* (1959), 358 U.S. 283, 296-297, 3 L. Ed. 2d 312, 321-322.

The Trust Fund came into being in 1950 as an integral part of an industry-wide collective bargaining

agreement. This Court, in its recent decision in *Lewis v. Benedict Coal Corp.* (Oct. Term, 1959, No. 18) U.S. , 4 L. Ed. 2d 442, recognized the close interrelationship between the activities of this Trust Fund and the mutual obligations of the parties to the Agreement from which it arose. This Court further stated in *Benedict, supra,* at p. 450, that the national labor policy was an important consideration when viewing this inter-relationship.

Therefore, if the necessary harmony between these two closely inter-related aspects of the national labor policy, namely, employee trust funds and collective bargaining agreements, is to be preserved, it is essential that judicial supervision of both be limited to the appropriate federal court, which shall review by applying a body of federal substantive law. At this moment, this important issue is in a state of confusion. Compare: *Barrett v. Miller* (D.C., S.D., N.Y., 1958), 166 F. Supp. 929 (recognizing that a body of federal substantive law is to be applied to Section 302 (*c*)(5) trust funds), with *Moses v. Ammond* (D.C., S.D., N.Y., 1958), 162 F. Supp. 866 (denying that any jurisdiction exists in the district courts over the supervision of welfare trust funds); and compare: *Myhalyk v. Lewis* (No. 149, March Term, 1959), 398 Pa. 390; A. 2d , decided January 18, 1960, rehearing denied March 10, 1960 (holding that Pennsylvania state courts have jurisdiction over this Trust Fund), with *Hobbs v. Lewis* (Supreme Court of Tennessee, 1954) 197 Tenn. 44, 270 S.W. 2d 352 (holding that the Tennessee courts have no jurisdiction over this Trust Fund, but that suits pertaining to its administration, such as the one at bar, must be brought in Washington, D. C.).

Having demonstrated that these matters should be litigated only in the federal courts, similar dangers of confusion and uncertainty require that the appropriate federal court should be the one at the situs or principal office of the trust fund. Uniformity of judicial review and supervision, so necessary for effective administration, is best achieved by limiting such review to that district court. Indication of the Congressional intent in this respect is found in Section 302 (c)(5), which specifically requires that deadlocks between trustees of a welfare trust fund, if not resolved within a reasonable time by the parties, be settled by the appointment of an "impartial umpire" selected by the district court of the United States for the district in which the welfare trust fund has its principal office.

Unless the federal courts of a single jurisdiction can adjudicate *all* the controversies which may arise regarding the administration of this Trust Fund, there will be no uniformity in its administration and the Trustees will be harassed by uncertainties and inconsistencies. Instead of all beneficiaries being dealt with alike, one applicant for a pension may receive very liberal treatment from the courts of his state, while another applicant may be held to a much more rigid standard by the courts of another state. A trust *sanctioned* upon a national basis, will become one *regulated* on a state-to-state basis.

Mines and miners are located in at least 26 states. If litigation, such as is involved here and in the companion *Myhalyk* case, arises in all of them, or in one or more of them, the risk of divergent decisions is ever present. Pension claims, such as those involved in these two cases, do not turn merely on factual issues. There is a fertile field for judicial interpretation of the

legal considerations which attach themselves to the facts.

The major eligibility provisions for a pension are that the applicant must (1) be 60 years of age or over at the time of filing his application; (2) have completed 20 years of service in *a classified job*, i.e., a job subject to the collective bargaining agreement in the coal industry, during the 30 years *immediately preceding his date of application*; (3) have retired after May 28, 1946, *following regular employment* in a classified job in the mine of an operator signatory to the agreement; and (4) have been regularly employed in a classified job in the coal industry *immediately prior to May 29, 1946*.[3]

According to the Douglas Subcommittee Report, p. 176, in one fiscal year denials of pension applications amounted to 16.7 percent (1182 denials) of those received, some of the reasons for denial revolving around the foregoing requirements. Indeed, this Report goes on to state (p. 177) that approximately a third of all denials in one year were on the ground that the applicant had not been employed in the industry "immediately prior to May 29, 1946." That is precisely the question involved in the case at bar, according to the complaint.[4]

[3] See the complaint filed in the District Court; see, also, for a statement of these provisions, Final Report of Welfare and Pension Plans Investigation (p. 175) submitted to the Senate Committee on Labor and Public Welfare by its Subcommittee on Welfare and Pension Funds (sometimes called the Douglas Subcommittee), pursuant to S. Res. 40 as extended by S. Res. 200 and S. Res. 232 (84th Congress), S. Rep. No. 1734, 84th Cong., 2d Sess.

[4] Paragraph 5 of the complaint avers:

> 5. Plaintiff is eligible for a pension from the aforesaid Fund based upon the following

There are numerous other instances of areas of controversy between pension claimants and the Trustees. For example, in considering employee status in a job subject to the bargaining unit, as required by Section 302 (c)(5) of the Act, the following factual situations occur:

(a) An employer is temporarily shut down, and the applicant has accepted what he contends is temporary employment elsewhere.

(b) An applicant was ill and not working prior to filing his application.

(c) An applicant was previously injured and on workmen's compensation prior to his application.

(d) Whether an applicant, working, e.g., as a maintenance man for company houses, watchman, or company clerk, is in a job subject to the bargaining unit.

"(a) He was certified to be a member of the United Mine Workers of America, Local 7951, Hostetter, Pennsylvania, on July 3, 1953. Plaintiff was employed in the Bituminous Coal Industries for forty-one years.

"(b) Plaintiff was past sixty years of age when he applied for his pension on July 5, 1953.

"(c) Plaintiff retired from work in the coal industry after May 28, 1946.

"(d) Plaintiff completed twenty years of classified service in the coal industry within the thirty years immediately preceding his application for a pension.

"(e) Plaintiff was a member of his local union immediately prior to May 28, 1946; however, due to a sinus condition, plaintiff left the mines in September, 1942, being physically unable to perform this type of work and was on leave of absence from his employment. When, after surgical operations, this condition became cured, plaintiff returned to the mines in January, 1947, where he was employed until April, 1951. • • •"

Also, the phrase "immediately prior to May 29, 1946" calls for interpretation in cases wherein:

(a) A company closed down permanently or temporarily and applicant became unemployed.

(b) An applicant was laid off but remained on company panel.

(c) An applicant was previously injured and receiving workmen's compensation payments.

Also, the requirement that an applicant for a pension be employed within the bargaining unit for twenty years of the thirty years immediately preceding the date of application calls for a determination of whether the applicant was in such an employee status for the required period. In this connection, the following situations are encountered:

(a) The industry in some areas works only a part of the year.

(b) Many employees work intermittently rather than continuously.

(c) Whether all jobs during eligibility period were subject to the bargaining unit.

Thus, fortuitously, two pension applicants whose cases are such that they should be treated alike, may fare differently according to the state in which each may sue. One court might determine that an applicant was not in an employee status while out of the industry for a period of one year because of illness, while another court may treat an absence of one year to be only temporary and establish employee status in that case.

These examples could be multiplied, not only in relation to the pension claimants, but, as well, with

respect to other benefits, such as hospital-medical, death and disaster payments of the instant Trust Fund; moreover other trust funds must, of necessity, encounter like problems. How would trustees deal with such divergent and conflicting views? Not only would they be compelled to treat two applicants differently, but which precedent would they use to deal with similar cases in the future? And, suppose a third applicant comes from a third state, which has not so far passed upon the question.

Aside from the substantive areas of controversy outlined above, there are many situations where divergent judicial views upon procedural matters would "play havoc" with the orderly administration of the Trust Fund. Several examples can be given, where a court not at the situs of the trust may make the following rulings: (1) De novo review, rather than inquiry into abuse of trustees' discretion; (2) permitting pension claimant to seek removal of trustees as part of his suit for a pension; (3) allowing class actions to be maintained; and (4) applying longer periods of limitation than as prescribed at the situs.

To resolve the foregoing dilemmas, this Court may search the authorities of the various states, in order to find the rule which best effectuates a uniform national labor policy. *Textile Workers Union* v. *Lincoln Mills, supra,* 353 U.S. at 457, 1 L. Ed. 2d at 980-981. It is obvious that the effectuation of such uniform policy requires that suits pertaining to the administration of a Section 302 welfare trust fund be brought in the district court at the situs (i.e., principal office) of such fund. It will be found that every court dealing with the instant problems, except the courts in Pennsylvania, has held that suits pertaining to the payment of benefits

from the instant Trust Fund must be brought at its principal office or situs in Washington, D. C. *Hobbs* v. *Lewis, supra; Herr* v. *Lewis* (1954) (D.C. S.D., Ind.), Civil Action No. 576; *Kane* v. *Lewis* (1953) (Sup. Ct. N.Y.), 125 N.Y.S. 2d 544; *Fikes* v. *Fund* (1958) (Cir. Ct. 10th Judicial Circuit of Ala.), Civil Action No. 36362-X; *Luchetti* v. *Lewis* (1954) (D.C., D. Utah), Civil Action No. C 184-53; *Hickey* v. *Lewis* (1950) (Harlan Cir. Ct., Ky.).[5]

In sum, uniform administration of Section 302 (c) (5) welfare trusts is an integral part, and necessary to the preservation, of labor-management stability which Congress sought to achieve in enacting the Labor-Management Relations Act, 1947 (29 U.S.C. 141, et seq.). Conflicting determinations as to eligibility for benefits from the instant Trust Fund by courts of the coal producing states will result in chaos and complete frustration of the Trustees in carrying out the mandate by which the Trust Fund was established under the Act. This will necessarily destroy labor-management

[5] The rulings in these cases were predicated on the elementary doctrine of trust law that suits pertaining to the administration of a trust must be brought at the situs of the trust. The basis of this doctrine was aptly stated in *Living Trust of Movables in the Conflict of Laws*, 45 Harvard Law Rev. 969:

> "The question to what court a trustee of a living trust is responsible in the matter of instructions and accounting is of much importance. Although it is not generally understood, *it must be clear that a trustee must be responsible to the courts of one state only; otherwise, conflicting instructions and differences as to accounts will make the administration of a trust impossible.* If one court is to give instructions and orders to a trustee and to approve his accounts, that court must clearly be one of the state of the seat of the trust; and it has been held that only such a court can instruct, control or remove the trustee." (Emphasis supplied) See also: Restatement of the Conflict of Laws, Section 299.

stability and disrupt peace in the bituminous coal industry. Fixing the situs or location of the principal office of a Section 302 trust fund as the only place where controversies affecting its administration may be litigated, would contribute greatly to achievement of the purposes of the Act. The occasional inconvenience to a claimant is far outweighed by the damage sustained by a trust harried and racked by unequal and inconsistent treatment of its beneficiaries.

CONCLUSION

For the foregoing reasons, it is submitted that this petition should be granted.

Respectfully submitted,

JOHN J. WILSON
A. E. KOUNTZ
VAL J. MITCH

Attorneys for Petitioners

April, 1960.

APPENDIX

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 16096

JOHN PAVLOVSCAK, *Plaintiff*

v.

JOHN L. LEWIS, CHARLES A. OWEN, and JOSEPHINE ROCHE, as Trustees of the United Mine Workers of America Welfare and Retirement Fund, *Defendants*

Opinion

JOHN W. McILVAINE, *District Judge*

The plaintiff filed this action to enforce payments of an alleged pension due him from defendants. Service was made by delivering a copy of the complaint to W. Phillips Palmer, Assistant Administrator and person in charge of an office located at 605 Empire Building in Pittsburgh, Pennsylvania. The return of the United States Marshal also indicates that this was the place of business of the United Mine Workers of America Welfare and Retirement Fund. It also appears that the plaintiff issued a writ of foreign attachment and that was served upon the United States Steel Corporation and the Pittsburgh Consolidation Coal Company. The defendants thereafter filed a motion to dismiss the complaint alleging improper service of process, lack of jurisdiction and venue, and moved to quash return of service of summons and to quash the writ of foreign attachment. This matter came on for hearing and the counsel for the plaintiff advised the Court that he was not seriously pressing the writ of foreign attachment feeling that the service on the defendants was good and that he was interested in obtaining a judgment against the defendants rather than the garnishee.

The principal ground on which the defendants rely is that service was not made in accordance with Rule 4, Federal Rules of Civil Procedure, 28 U.S.C.A., or pursuant to any rule or law of the United States or the Commonwealth of Pennsylvania. They further take the position that the jurisdiction and venue are lacking because this suit directly involves the administration of a trust of movables, the situs of which is located outside the Commonwealth of Pennsylvania.

From the facts as stipulated between the parties, it appears that the United Mine Workers of America Welfare and Retirement Fund of 1950 (hereinafter referred to as the Fund) was created by written instrument known as National Bituminous Coal Wage Agreement of 1950, between certain bituminous coal operators and the United Mine Workers of America. The agreement creating was executed in Washington, D. C., and the fund was created on March 5, 1950. It is administered by three trustees appointed by the parties to the agreement. The trustees are: John L. Lewis, a citizen of the State of Illinois; Josephine Roche, a citizen of the State of California; and Charles A. Owen, recently deceased, was a citizen of the State of Florida. The trustees held meetings at the Fund's office in Washington, D. C. They held two emergency meetings in the State of Florida. The principal assets of the Fund are personal property. Numerous residents of the Commonwealth of Pennsylvania receive pensions from the pension fund and as of June 30, 1956, over 61,000 retired miners were receiving pensions. Remittances from the operators are made to the Fund's office in Washington, D. C. There are numerous operators in Pennsylvania who make payments into this fund. Between March 5, 1950, and June 30, 1956, over $832,000,000 has been paid into the fund by the operators and over $365,000,000 has been used for the payment of pensions during that same period of time. The Fund has 441 employees for administration of the fund

and there are 42 employees in two area medical locations in Pennsylvania. The Fund has filed 62 suits in this court for failure of operators to remit the royalty payments due.

It is obvious that Pennsylvania is one of the leading coal production states in the United States and necessarily large amounts of royalties are earned, owed, and regularly collected by the Fund in Pennsylvania. Auditors of the Fund come into Pennsylvania to examine and audit the books of the operators. At the time of filing this suit, the defendants maintained a listing in the Pittsburgh telephone directory under the name, United Mine Workers of America Welfare and Retirement Fund, Empire Building, Express 1-1860, and it was in the Empire Building where the United States Marshal served W. Phillips Palmer. The Fund frequently sends examiners into Pennsylvania to examine books of operators. It appears that after the Marshal served Mr. Palmer, notice of this suit was immediately given to officials of the Fund in Washington, D. C., by Mr. Palmer.

When monies are received in Washington, D. C., they go into a general account and then on a basis of statistical analysis the funds are allocated to the pension fund and to the administrative fund or account. The individual served, Mr. Palmer, is paid out of funds put into the administrative account which in turn comes out of the general fund and the general funds are distributed either to the pension fund or the administrative account. It also appears that no accounting of the Fund's activities has been filed in any court of the United States or in any United States Court.

With these facts in mind, we must now turn to resolving the basic question of whether the defendants' motion to dismiss is well taken or not. The plaintiff maintains that there is good service of process under the law of Pennsylvania. The defendant, on the other hand, says that it is a trust and only a trust and that

it can only be amenable to the laws of the District of Columbia. Though it calls itself a trust, we are not convinced that it is a trust in the strict sense of that word. It does rely on some cases in other jurisdictions that would so indicate. See *Van Horn* v. *Lewis*, D. C. 1948; 79 F. Supp. 541, 545; Cf. *Hobbs* v. *Lewis*, D. C. 1958, 159 F. Supp. 282. But the courts of Pennsylvania have recently held that this so-called trust is not a trust in the normal sense, but is rather an unincorporated association. They were aware of the decisions holding that jurisdiction in cases such as this rested solely in the District of Columbia. They as we are were impressed by the thought that the convenience of thousands of miners throughout the land should be considered. The decision of this Court was withheld pending the Pennsylvania Court's decision. The parties to this proceeding were in agreement that the Pennsylvania decision would have great weight with this Court. The Superior Court of Pennsylvania made its decision in *Stampolis* v. *Lewis*, 1958, 186 Pa. Super. 285, 142 A. 2d 348. Allocatur was refused by the Supreme Court of Pennsylvania on August 19, 1958. Mr. Justice Stewart in a recent opinion in the United States Court of Appeals for the Sixth Circuit before his elevation to the Supreme Court lends support to this thinking when he indicated that while this fund is in some respects similar to charitable trusts, it is not a true charitable trust. *Lewis* v. *Benedict Coal Corp.*, 6 Cir., 1958, 259 F. 2d 346, 355.

This Court not only feels that the views expressed by the Superior Court in the *Stampolis* case are controlling on this Court as interpreting the law of Pennsylvania, but we feel that it is a sound decision. In that case, it is obvious that the Superior Court rejected the defendants' argument that they are a trust and found that the defendants are an unincorporated association under the Pennsylvania Rules of Civil Procedure. An association means an unincorporated association conducting any business or any activity

of any nature whether for profit or otherwise under a common name. Pa. R. Civ. P. 2151, 12 P.S. Appendix. It is obvious that this Fund was engaging in business—that of collecting royalties from operators and paying them out to miners eligible for them. It was operating under the name of the United Mine Workers of America Welfare and Retirement Fund. It carried out many activities in Pennsylvania: Among others, it brought numerous suits in the Commonwealth of Pennsylvania; it sent its employees into Pennsylvania to examine books of those against whom it had claims; it maintained a listing in the Pittsburgh telephone directory; and it collected large sums of money from Pennsylvania.

Pennsylvania Rules of Civil Procedure, Rule 2156, provides that: ". . . an action against an association may be brought in and only in a county where the association regularly conducts business or any association activity . . .". It certainly appears that many activities of the association were carried on in Allegheny County such as maintaining a listing in the telephone directory; and the primary concern to the Fund, the collection of monies and the examination of the books of operators. The process herein was served in accordance with Pennsylvania Rule of Civil Procedure 2157 for it was served on the person in charge of the place where the association carried on activities; that is, it was served at the office where it was listed in the Pittsburgh telephone directory.

It is also possible that this Fund could be an entity similar to a corporation within the meaning of Rule 2176 of the Pennsylvania Rules of Civil Procedure.

> " 'corporation or similar entity' includes any public, quasi-public or private corporation, insurance association or exchange, registered partnership, partnership association limited, joint stock company or association, 'Massachusetts trust', or any other association

which is regarded as an entity distinct from the members composing the association. . . ."
See Rule 2176.

It is interesting that a note to this Rule indicates that the phrase "corporation or similar entity" includes all associations and business entities which are regarded as separate and distinct from their members, and there was no attempt to enumerate all the various classes of private corporations falling within the definition.

If the Fund is an entity similar to a corporation, service is proper if it is on a person for the time being in charge of any office of the entity. It was argued whether this was an office of the entity, but in any event service is permitted on an entity by sending the copy of the complaint by registered mail direct to the Secretary of the Commonwealth and to the entity at its principal place of business as the Court might direct. See Pennsylvania Rule of Civil Procedure 2180. Here it is obvious that the defendant received speedy notice and that, of course, is the main intention of Rule 2180.

The situation here is somewhat akin to a class suit and the criterion as to service in a class suit is whether the service in question constitutes adequate notice to the class sued to come in and defend. *Malarney v. Upholsterers' International Union*, D.C. E.D. Pa. 1947, 7 F.R.D. 403.

Mr. Palmer, the individual served, testified that he was an employee of the medical fund, but was not authorized to accept the service in this case. However, it is interesting to note that he is paid a salary from the same fund as one of the trustees of the Fund is paid.

Dr. Warren F. Draper testified that he was the executive medical officer of the United Mine Workers of America Welfare and Retirement Fund. This Fund, of course, is

the defendant in this case. He, from time to time, visits the local offices, Pittsburgh being one of them. His primary duty is to supervise the medical work of the Fund and Mr. Palmer was the assistant to Dr. Draper for this area.

The defendants have attempted to distinguish the medical office from the pension fund, but this distinction seems more fanciful than real. The medical fund obviously operates under the United Mine Workers of America Welfare and Retirement Fund, and was created under this Fund and has no independent existence. If this be true, then the service upon Mr. Palmer would be good service upon the Fund under normal procedures by serving a defendant in the office of the defendant where it regularly carries on business. *Claycraft Co.* v. *United Mine Workers of America*, 6 Cir., 1953, 204 F. 2d 600.

Applying the rationale of *Stampolis* v. *Lewis*, *supra*, we feel that under all the pertinent facts that jurisdiction and venue are not lacking in this Court, and our finding as the ultimate fact after considering all the relevant testimony is that the Fund is doing business in Pennsylvania and that this would be the result in Pennsylvania within the somewhat restrictive ruling of *Lutz* v. *Foster & Kester Co., Inc.*, 1951, 367 Pa. 125 79 A. 2d 222, although this Court feels that the rule of the *Lutz* case might be relaxed if it were again before the Supreme Court of Pennsylvania in view of the trend of the judicial decisions throughout the nation and in the Supreme Court of the United States in recent years. See also *Partin* v. *Michaels Art Bronze Co.*, 3 Cir., 202 F. 2d 541.

In addition to our thoughts that the defendants are not a trust in the normally accepted sense, we feel that they are a new creature created pursuant to the Labor-Management Relations Act of 1947, 29 U.S.C.A. § 141. They were created by federal law and should be amenable to federal law; there is no reason to resort to the old and ancient theories of trust law. The Fund is a creature of new federal legislation and we must not stifle it. The beneficiaries, the

thousands of hard working miners, who have labored years under the ground in creating this Fund, must not be forced to go to Washington, D. C., but should and must be able to go to the federal court in their district in order to have their rights and claims adjudicated in a tribunal convenient to them and certainly not inconvenient to the Fund.

We repeat that this is a new type of relationship that only lately has been developed as a concept of employer-employee relationship. The Fund was created pursuant to Section 302 (c) of the Labor-Management Relations Act, 1947, 29 U.S.C.A. § 186(c). As Justice Douglas so aptly pointed out:

> "The Labor Management Relations Act expressly furnishes some substantive law. It points out what the parties may or may not do in certain situations. Other problems will lie in the penumbra of express statutory • • • sanction but will be solved by looking at the policy of the legislation and fashioning a remedy that will effectuate that policy. The range of judicial inventiveness will be determined by the nature of the problem. See *Board of Commissioners of Jackson County* v. *United States*, 308 U.S. 343, 351, 60 S. Ct. 285, 84 L. Ed. 313. Federal interpretation of the federal law will govern, not state law. Cf. *Jerome* v. *United States*, 318 U.S. 101, 104, 63 S. Ct. 483, 87 L. Ed. 640. But state law, if compatible with the purpose of § 301, may be resorted to in order to find the rule that will best effectuate the federal policy. See *Board of Commissioners of Jackson County* v. *United States*, *supra*, 308 U.S., at 351-352, 60 S. Ct., at pages 288-289. Any state law applied, however, will be absorbed as federal law and will not be an independent source of private rights." *Textile Workers Union of America* v. *Lincoln Mills*, 353 U.S. 448, 457, 77 S. Ct. 912, 918, 1 L. Ed. 2d 972.

Accordingly, defendants' motions to dismiss and to quash service should be denied.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,835

JOHN A. PAVLOVSCAK, *Appellee*

v.

JOHN L. LEWIS, HENRY G. SCHMIDT AND JOSEPHINE ROCHE, AS TRUSTEES OF THE UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND, *Appellants*.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Argued June 4, 1959

Before: GOODRICH, KALODNER and HASTIE, *Circuit Judges*.

Opinion of the Court

(Filed September 18, 1959)

HASTIE, *Circuit Judge*.

In this case a retired coal miner seeks to establish his right to a pension to be paid by the United Mine Workers of America Welfare and Retirement Fund, as established by an agreement between certain coal operators and the United Mine Workers under sanction of Section 302 of the Labor-Management Relations Act of 1947. 61 STAT. 157, 29 U.S.C.A. § 186 (*c*). To this end he has sued "John L. Lewis, Henry G. Schmidt and Josephine Roche, as Trus-

tees of the United Mine Workers of America Welfare and Retirement Fund" in the District Court for the Western District of Pennsylvania, the district within which the plaintiff resides. Diversity of citizenship is asserted as the basis of federal jurisdiction.[1]

The United Mine Workers of America Welfare and Retirement Fund, hereinafter called the Fund, has been created and functions to provide medical and pension benefits for retired miners. It is administered in the District of Columbia pursuant to the constituting indenture by the

[1] Although no party has raised any question concerning the existence of the requisite diversity of citizenship here, it seems appropriate to point out that this case is different from *Underwood* v. *Maloney*, 3d Cir. 1958, 256 F.2d 334. There an individual brought suit claiming to represent the members of a labor union, an unincorporated association; as a class. We ruled that to establish diversity jurisdiction plaintiff must show that all members of the union were citizens of states other than those in which opposing parties resided.

Nothing like that appears here. The suit is against an organization created for special and defined purposes by an indenture executed by the United Mine Workers and certain coal operators. That organization is a body of three "trustees" vested with full authority and responsibility for carrying out the terms of the indenture. Pennsylvania treats this body of three as an unincorporated association for procedural purposes. Whether we would so characterize the group we accept for the purposes of this case the Pennsylvania conception.

Further distinguishing the *Underwood* case, the union members here do not pay into the Fund or control its administration. The individual union member may or may not, according to future circumstances, become legally entitled to benefits from the Fund. The trustees are not agents of the union or of the operators, since they are not responsible to these persons or required to do their bidding. They function independently with the indenture serving as their charter and defining their responsibilities. Indeed, the essence of the scheme seems to have been to set up a body in fact and in law separate and distinct from both the union and the mining companies. Thus, if the residence of the trustees satisfies diversity requirements it seems immaterial where the coal operators or the members of the union which established the Fund reside.

Trustees named in this case. Sums are paid into the Fund periodically by mine operators. The Trustees cause pensions and other benefits to be provided for miners found to be eligible. The Trustees are citizens of states other than Pennsylvania and, as individuals, have not been found within Pennsylvania. The corpus of the Fund consists of movables with situs in the District of Columbia.

Service of process was upon an alleged agent of the Fund in charge of an office maintained in the name of the Fund in Pittsburgh. A motion to dismiss the complaint has raised the question of the suability of the Fund in the Western District of Pennsylvania as well as the sufficiency of process. The district court denied the motion, *Pavlorszeak v. Lewis*, D.C. 1958, 168 F. Supp. 839. At the same time, it sanctioned this interlocutory appeal, which has been perfected as provided by Section 1292 (b) of Title 28, United States Code, as amended by the Act of September 2, 1958, 72 STAT. 1770.

What the plaintiff is attempting here is to have jurisdiction exercised over the Fund as a business organization in the nature of an unincorporated association. Under Rule 17 (b) of the Federal Rules of Civil Procedure, 28 U.S.C.A., the district court was obligated to determine the capacity of the Fund to be sued as a constituted business organization by applying the law of the state in which the district court sat. In this endeavor the district court turned to *Stampolis v. Lewis*, 1958, 186 Pa. Super. 285, 142 A. 2d 348, allocatur refused, Pennsylvania Supreme Court, August 19, 1958, certiorari denied 1959, 359 U.S. 907, 79 S. Ct. 582, 3 L. Ed. 2d 572, and found that there the Superior Court of Pennsylvania had considered the status of this very Fund as a party litigant and had treated it as a business unit suable in the same manner as an unincorporated association under Pennsylvania law. True that case involved a writ of foreign attachment, while this one is an attempted exercise of ordinary jurisdiction over the or-

ganization directly, but for present purposes the important thing is that the *Stampolis* decision is an authoritative Pennsylvania ruling that Pennsylvania procedural law treats this Fund, for purposes of suability and amenability to process, like an ordinary unincorporated association. It may be, as has been argued to us, that for certain purposes of substantive law the Fund will be treated as a trust, or perhaps as something else, but for present purposes that is irrelevant. We are narrowly concerned with Pennsylvania procedure for handling suits against organized groups conducting business activity in that state.

The *Stampolis* case goes further. It treats the actual contacts of the Fund with Pennsylvania, which are also before us now, as sufficient to bring it within the reach of the local courts. Here again the Pennsylvania view of Pennsylvania law is conclusive, unless the relationship of the Fund to the state is so slight and inconsequential that its subjection to the jurisdiction of local courts offends due process of law.

The due process question need not detain us long. The facts stipulated or otherwise in evidence without dispute show substantial activity of the Fund in Pennsylvania and substantial direct impact of its activities upon the local community. Mine operators in Pennsylvania continue to pay money into the Fund while many retired miners in Pennsylvania receive substantial benefits from it. In this connection, employees of the Fund from time to time inspect books and records of operators in Pennsylvania in determining the extent of obligations to the Fund. In addition, the Trustees on behalf of the Fund have filed more than sixty suits in the Western District of Pennsylvania against coal operators for alleged failure to make payments owed to the Fund.

The Fund maintains in its own name two area medical offices in Pennsylvania for the administration of its responsibility to provide medical benefits to miners in the area. Some forty-two persons, about ten per cent of the entire

staff of the Fund, are employed in these Pennsylvania offices. In this case service of process was upon the officer in charge of the Pittsburgh area medical office.

The Supreme Court has accepted much less substantial local activity than we have here in furtherance of an out-of-state enterprise as sufficient to make it reasonable for the state to subject the entrepreneur to the jurisdiction of its courts. *McGee v. International Life Ins. Co.*, 1957, 355 U.S. 220, 78 S. Ct. 199, 2 L. Ed. 2d. 223; *International Shoe Co. v. State of Washington*, 1945, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95. Accordingly, we find no constitutional objection to the position taken by Pennsylvania that this Fund may be sued in Pennsylvania as an unincorporated association doing business in that state.

Finally, the District Court inquired whether service on the officer in charge of the Pittsburgh office satisfied the procedural requirements of Rule 2156 and Rule 2157 of the Pennsylvania Rules of Civil Procedure, 12 P.S. Appendix. This inquiry was appropriate since Rule 4 (d) (7) of the Federal Rules of Civil Procedure authorizes service of summons and complaint "in the manner prescribed by the law of the state in which the service is made." On this point the court below said:

> "Pennsylvania Rules of Civil Procedure, Rule 2156 provides that: '. . . an action against an association may be brought in and only in a county where the association regularly conducts business or any association activity . . .'. It certainly appears that many activities of the association were carried on in Allegheny County such as maintaining a listing in the telephone directory; and the primary concern to the Fund, the collection of monies and the examination of the books of operators. The process herein was served in accordance with Pennsylvania Rule of Civil Procedure 2157 for it was served on the person in charge of the place where the association carried on activities: . . .". 168 F. Supp. at page 842.

In the light of what we already have said about the activities of the Fund, and particularly the operation of its area medical offices, in Pennsylvania and in the Pittsburgh area we are satisfied that the conclusion of the court below was correct. *Cf. Clagcraft Co. v. United Mine Workers of America*, 6 Cir., 1953, 204 F.2d 600. In this connection it is worth mentioning that, when process was served in this case on August 9, 1957, Pennsylvania law recognized rather slight activity within the state as sufficient to constitute "doing business" for purposes of the law regulating service of process. *Florio v. Powder-Power Tool Corp.*, 3 Cir., 1957, 248 F.2d 367. The subsequent reinstatement of the more restrictive "solicitation plus" doctrine under Act No. 370 of July 11, 1957, P.L. 711, § 1, 15 P.S. § 2852-2 et seq., did not become effective until September 1, 1957, too late to affect this case. Actually, we think the business activity of the Fund within Pennsylvania was sufficient to satisfy the concept of doing business under the present Pennsylvania law. Certainly, it was much more than enough under the law in force during August 1957 as we interpreted it in the *Florio* case.

For these reasons the interlocutory order from which this appeal has been taken will be affirmed.

A True Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,835

JOHN A. PAVLOVSCAK, *Appellee*

v.

JOHN L. LEWIS, HENRY G. SCHMIDT AND JOSEPHINE ROCHE, AS TRUSTEES OF THE UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND, *Appellants.*

SUR PETITION FOR REHEARING

Present: GOODRICH, MCLAUGHLIN, KALODNER, STALEY, HASTIE and FORMAN, *Circuit Judges.*

Opinion of the Court

(Filed February 10, 1960)

PER CURIAM:

Our decision on this appeal turned upon Pennsylvania law as announced in *Stampolis v. Lewis*, 1958, 186 Pa. Super. 285, 142 A.2d 348. Now we are able to reexamine our original opinion in the new light which the Supreme Court of Pennsylvania has cast upon the *Stampolis* ruling in *Mykalyk v. Lewis*, No. 149, March Term, 1959, — A. 2d —, decided on January 18, 1960.

More particularly, our conclusion that the United Mine Workers of America Welfare and Retirement Fund was suable in Pennsylvania and that proper procedure had been followed in serving process depended upon Pennsyl-

vania law as announced in the *Stampolis* case. Now, in the *Myhalyk* case, with this very Fund before it the Supreme Court of Pennsylvania has considered the *Stampolis* decision and has approved the *Stampolis* result, but has given it an authoritative new rationale. Specifically, while *Stampolis* indicated that the Trustees of the United Mine Workers of America Welfare and Retirement Fund were suable in Pennsylvania as an unincorporated association, the *Myhalyk* case has now established that this enterprise is suable in Pennsylvania, but as a "foreign corporation or similar entity" under Rule 2176, Pennsylvania Rules of Civil Procedure, 12 P.S. Appendix, p. 482. In addition, Rules 2179 and 2180 provide a procedure for the service of process upon such an entity in a county where it regularly conducts business by personally serving the pleading upon the "agent or person for the time being in charge of, * * * any office or usual place of business of the corporation or similar entity". As our original opinion indicates, this procedure was followed here. It is valid under Rule 4 (d)(7) of the Federal Rules of Civil Procedure, 28 U.S.C.A. Actually, there is no essential difference between the procedure prescribed by Pennsylvania Rules 2156 and 2157 for serving a foreign unincorporated association and the procedure prescribed by Rules 2156 and 2157 for serving a foreign "corporation or similar entity". Thus, for present purposes it makes no difference that in approving the *Stampolis* result the Supreme Court of Pennsylvania has modified the *Stampolis* doctrine with respect to the proper legal characterization of United Mine Workers of America Welfare and Retirement Fund.

The petition for rehearing will be denied.

A True Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

29 USC. Section 186

Restrictions on payments to employee representatives; exceptions; penalties; jurisdiction; effective date; exception of certain trust funds

"(a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.

"(b) It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.

"(c) The provisions of this section shall not be applicable (1) with respect to any money or other thing of value payable by an employer to any representative who is an employee or former employee of such employer, as compensation for, or by reason of, his services as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided*, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; or (5)

with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): *Provided*, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, *on petition of* either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing

pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities."

• • •

"(e) The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 381 of Title 28 (relating to notice to opposite party) to restrain violations of this section, without regard to the provisions of section 17 of Title 15 and section 52 of this title, and the provisions of sections 101-110 and 113-115 of this title."

• • •

FILE COPY

OFFICE - SUPREME COURT, U.S.
FILED
MAY 12 1960
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

October Term, 1959

No. 857

JOHN L. LEWIS, HENRY G. SCHMIDT AND JOSEPHINE ROCHE, AS TRUSTEES OF THE UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND OF 1950, *Petitioners*

v.

JOHN A. PAVLOVSCAK, *Respondent*

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITIONERS' REPLY BRIEF

JOHN J. WILSON
815 - 15th Street, N. W.
Washington 5, D. C.

A. E. KOUNTZ
575 Union Trust Building
Pittsburgh 19, Pennsylvania

VAL J. MITCH
907 - 15th Street, N. W.
Washington 5, D. C.

Attorneys for Petitioners

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

October Term, 1959

No. 857

JOHN L. LEWIS, HENRY G. SCHMIDT AND JOSEPHINE ROCHE, AS TRUSTEES OF THE UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND OF 1950, *Petitioners*

v.

JOHN A. PAVLOVSCAK, *Respondent*

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITIONERS' REPLY BRIEF

Respondent, in his Brief in Opposition to Petition for Certiorari, contends that this Court should deny the petition upon the ground that the petitioners failed to raise in the courts below the question presented here. Petitioners submit that respondent is in error.

The question presented to this Court by the petition is whether suits pertaining to the administration of an

employees' welfare trust fund created pursuant to Section 302(c)(5) of the Labor Management Relations Act, 29 U.S.C. 186(c)(5) must be brought in the federal court in the District of Columbia, the situs of the instant Fund.

From the inception of this suit, petitioners have urged that suits pertaining to the administration of this Fund must be brought in the federal court at its situs. Thus, petitioners appeared specially before the United States District Court for the Western District of Pennsylvania urging that venue and jurisdiction were improper in that court, and that the instant suit must be brought in the United States District Court for the District of Columbia. (See defendants' motion to dismiss, paragraphs 4 and 6, pp. 11a-12a of Joint Appendix).

The District Court, however, construed Section 302(c)(5) of the Labor Management Relations Act, 1947, 29 U.S.C. 186 (c)(5), and the national labor policy to permit that suits affecting the administration of an employee welfare trust fund created under Section 302(c)(5) be brought in the district in which the claimants reside, stating:

> "In addition to our thoughts that the defendants are not a trust in the normally accepted sense, we feel that they are a new creature created pursuant to the Labor-Management Relations Act of 1947, 29 U.S.C.A. § 141. They were created by federal law and should be amenable to federal law; there is no reason to resort to the old and ancient theories of trust law. The Fund is a creature of new federal legislation and we must not stifle it. The beneficiaries, the thousands of hard working miners, who have labored years under the ground in creating this Fund, must not be forced to go to Washington, D.C., but should and must be able to

go to the federal court in their district in order to have their rights and claims adjudicated in a tribunal convenient to them and certainly not inconvenient to the Fund.

"We repeat that this is a new type of relationship that only lately has been developed as a concept of employer-employee relationship." (Appendix, Pet. for Cert. pp. 7a-8a)

Petitioners renewed their contention before the United States Court of Appeals for the Third Circuit,[1] stating at pages 19 and 20 of their brief:

"We have seen that Congress intended to authorize the creation of welfare and retirement trusts subject to judicial supervision similar to that exercised over other inter vivos trusts of movables, and that the law regarding inter vivos trusts of movables requires that they shall be administered only by the court at the situs of the trust. It, therefore, follows that Congress intended a trust created pursuant to the authority of the Act to be responsible in matters of administration only to the court at the trust's situs.

"This interpretation is fortified by the express language of Section 302(c)(5) of the Act. (29

[1] See also petitioners' Application for Permission to Appeal from Order Denying Motion to Dismiss Complaint, wherein at page 8 thereof, petitioners stated:

"If disgruntled applicants for pensions, after failure to qualify under the regulations, are able to bring suit in each of 26 states, the tremendous burden of litigation which will be imposed upon the Fund will inevitably result in the erosion of the trust and will frustrate not only the uniform administration of the Fund but also the Congressional intent clearly expressed in the Labor Management Relations Act, 1947, and the Legislative history of the Act, which was reviewed by this Court in the Essex case."

> U.S.C.A. 186(c)(5)). Congress anticipated possible 'deadlock on the administration of such fund(s)' among the trustees and provided for the appointment of a neutral to break such deadlocks 'by the district court of the United States for the district *where the trust fund has its principal office*'. (Emphasis supplied). It may be concluded therefrom that Congress evinced a legislative intent that a trust permitted under this statute should be dealt with as any other trust of movables in that the court at its situs should be solely responsible for the judicial regulation of its administration."

Respondent clearly rgecognized petitioners' position, and on page 14 of his brief to the United States Court of Appeals for the Third Circuit admitted:[2]

> "Defendants, in their brief, refer to Section 302 of the Taft-Hartley Act, as giving them some supposed right to have actions against the Fund litigated only in Washington, D.C."

The Third Circuit, however, ignored this entire line of argument, affirming the District Court solely upon the basis of the construction of Pennsylvania law by Pennsylvania courts. (Appendix, Pet. for Cert. p. 12a) Petitioners then moved for a rehearing, again urging that the instant Fund and suits relating to its administration must be decided upon the basis of federal law, not state law. (See point 3 of petitioners' petition for rehearing, pp. 5-6.) Petitioners' petition for rehearing was denied upon the basis of Pennsylvania law. (Appendix, Pet. for Cert. pp. 15a-

[2] Indeed, respondent in his brief to the Third Circuit argued the contrary construction of Section 302(c)(5) at great length (See respondent's brief, pp. 14-18).

16a) This Court has uniformly held that a decision purportedly based upon state law but which in effect construes federal law, does not relieve this Court of its duty to pass upon the federal questions involved. *Grand River Dam Authority* v. *Grand Hydro* (1948) 335 U.S. 359, 369-70, 93 L. Ed. 64, 72, and cases cited therein.

Accordingly, petitioners in the instant petition for certiorari again raised the important federal question presented by this suit.

Finally, respondent claims that Section 302(c)(5) is essentially a criminal statute and cites *Weir* v. *Chicago Plastering Institute, Inc.* (D.C. Ill. 1959) 177 F. Supp. 688 (Respondent's Brief in Opposition, p. 4). This position cannot be reconciled with this Court's opinion in *Arroyo* v. *United States* (1959) 359 U.S. 419, from which we quoted at page 7 in the Petition for Certiorari.

Indeed, respondent's Brief in Opposition clearly reveals the confusion in the various courts as to the proper interpretation of an employees' welfare trust fund created pursuant to Section 302(c)(5) of the Labor Management Relations Act, 29 U.S.C. 186(c)(5), and as to the jurisdiction where suits affecting their administration must be brought. (Compare respondent's Brief, pp. 4-6, with Petition, p. 9)

Lewis v. *Stampalis* (No. 594, October Term, 1958), in which this Court denied certiorari on February 24, 1959 (see 359 U.S. 907), did not present the question in the posture in which it is presented in the instant petition and in the companion petition in *Lewis* v. *Mylotylk*, No. 856, October Term 1959. Important

pronouncements of this Court intervened in the meantime. See, e.g., *Arroyo* v. *United States*, decided May 4, 1959, 359 U.S. 419; and *Lewis* v. *Benedict Coal Corp.* (No. 18, October Term 1959), decided February 23, 1960, ... U.S. .... 4 L. Ed. 2d. 442.

The petition for certiorari should be granted.

Respectfully submitted,

JOHN J. WILSON
815 - 15th Street, N. W.
Washington 5, D. C.

A. E. KOONTZ
575 Union Trust Building
Pittsburgh 19, Pennsylvania

VAL J. MITCH
907 - 15th Street, N. W.
Washington 5, D. C.

Attorneys for Petitioners

May, 1960.